IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1318 OF 2005

M/s.Aero Agencies Ltd. ...Petitioners

Versus

Union of India & Anr. ...Respondents

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Mr.R.M.Nerlekar for Petitioners.

Mr.D.N.Salvi for Respondent No.1.

Ms.M.M.Deshmukh, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

NOVEMBER 25, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Salvi waives notice for Respondent No.1. Ms.Deshmukh, A.P.P. waives notice for Respondent No.2.

3. As short question is involved, Petition is

taken up for final disposal forthwith, by consent.

4. The Respondent No.1 has launched prosecution against the Petitioners in relation to offence under rule 21 of Payment of Wages (Air Transport Services) Rules 1968 on the assumption that the Petitioners have employed persons who are paid monthly average salary of less than Rs.1,600/- (Rupees One Thousand Six Hundred) and have failed to comply with the procedural formalities required under the Rule. By this Petition, it is stated by the Petitioners on affidavit that the Petitioners have not employed any person drawing wages below Rs.1,600/- (Rupees One Thousand Six Hundred) per month. This statement of fact can be discerned from paragraph No.5 of the Petition. On this basis, it is contended by the Petitioners that the provisions of Payment of Wages Act, 1936, will have no application to the Petition. In support of this submission, Counsel for the Petitioners has placed reliance on the decision of the Division Bench of our High court in the case of **Panther Power Kamgar Sanghatana vs. Y.C.Jhalani & Ors. reported in 1998 I CLR 444.** In Paragraph No.8 of the said

decision at page 449, the Division Bench of this Court, after construing all the relevant provisions, has taken the view that by reading the provisions of Section 1(6), it is clear that the provisions of the Payment of Wages Act is not applicable to the cases with average wages at Rs.1,600/- or more per month. Even in that case, none of the employee appointed by the Management was drawing wages less than Rs.1,600/- per month. On that basis, the Court proceeded to observe that the provisions of the Payment of Wages Act were inapplicable. The said decision applies on all fours to the case on hand. In the present case, as mentioned earlier, it is stated in Paragraph No.5 of the Petition that the Petitioners have not employed any person, who is drawing wages below Rs.1,600/- per month. This factual position has remained uncontroverted. For which reason, the principle stated in the aforesaid Division Bench of this Court will apply to the case on hand.

5. Accordingly, this Petition ought to succeed in terms of prayer clause (a). Ordered accordingly.

A.M.KHANWILKAR, J.